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Democratic Steering & Policy Committee

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AMENDMENTS to the Proposed Reforms to the ETHICS PROCESS

March 3, 2008

Dear Colleague:

Last week, many of you raised thoughtful concerns about the proposal put forth by the Special Task Force on Ethics Enforcement to create an Office of Congressional Ethics (OCE). We heard you and will amend the proposal accordingly. I understand and respect that some Members will continue to have basic philosophical concerns about the creation of any independent entity. Unfortunately, we must respectfully disagree. For those who support such an approach these amendments should address the concerns expressed to me.

<u>Initial Proposal – OCE board appointments must be jointly made, but after 90 days appointments are made separately by the Speaker and Minority Leader without need for approval.</u>

The amendment will take a further step to ensure bi-partisanship on the OCE.

- All appointments must be joint appointments. No time limit.
- Speaker nominates three OCE members subject to concurrence of Minority Leader.
 Minority Leader nominates three OCE members subject to concurrence of Speaker.

<u>Initial Proposal – A review is initiated at the request of two OCE board members. The two can be appointees of the same party leader.</u>

This was the most frequently cited concern. Many Members felt that allowing the initiators to be people appointed by the same party leader did not sufficiently deter partisan-motivated witch hunts.

• The proposal will be amended so that reviews can be initiated only pursuant to a bi-partisan request -- one initiating member must have been nominated by the Speaker and the other by the Minority Leader.

Initial Proposal – The only way to terminate a review before it advances to the second phase is the affirmative vote of four OCE board members.

Although the two amendments above should guarantee that partisan witch hunts do not occur, some Members were also concerned that the possibility of two "rogue" members of the OCE pursuing partisan or personal actions was still too great.

• The amendment would terminate a review unless at least three members of the OCE affirmatively vote to advance it. This effectively requires the original two, jointly appointed, bi-partisan members to convince at least one more jointly appointed member that more information is needed to make a thoughtful decision on an allegation.

Taken together, these three amendments make it impossible to initiate a partisan witch hunt ... and impossible to use partisan stonewalling to thwart a reasonable review once it has begun. Members are protected, but so is the integrity of the process.

Miscellaneous Amendments

- Language will be clarified stating that House Members and staff are prohibited from inappropriately communicating with OCE board members or staff about a case that may be before the OCE.
- The language banning ex parte communication will be clarified to ensure that it applies to OCE staff as well as board members.
- OCE staff will be subject to the three-year pledge to not seek federal elective office.
- Language will be clarified that OCE staff are subject to the same restrictions as Ethics Committee staff relative to non-partisanship, prohibition on political activity, etc.
- Members and staff of the OCE shall be required to sign the same pledge of confidentiality as currently required for Ethics Committee staff.
- Members and staff of the OCE will be clearly prohibited from leaking information pursuant to the same limitations that apply to Ethics Committee Members and staff.

Even with these changes, Common Cause, U.S. PIRG, Norm Ornstein of the American Enterprise Institute and Tom Mann of the Brookings Institution still support the proposal. Some wonder why we should care about their opinions. The answer is simple - the public won't believe any action we take truly improves the process if Members are the only ones making the claim. Rightly or wrongly, the public perceives Congress as just another "good old boy network." We need the support of nationally respected, independent, non-partisan groups if we want the public to trust us when it comes to policing ourselves.

Of the three proposals mentioned on the floor last week, this is the ONLY proposal that enjoys the support of nationally respected, independent, non-partisan groups.

The Republican alternative contains some very troubling measures. For example, according to the Republican Leader's website, their proposal "requires the House Ethics Committee, after 90 days, to refer any matters stalled by partisan gridlock to the FBI and Department of Justice." There is no distinction between an allegation of improperly accepting a cup of coffee and an allegation of accepting a million dollar bribe.

In today's *Roll Call*, Republican Members of the Task Force focus on their fear that the OCE may become too partisan. The amendments outlined above address these concerns – all appointees to the OCE must be jointly appointed and reviews can only be initiated at the request of one Democratic nominee and one Republican nominee.

I hope these amendments address your concerns. I believe they do and that they improve the proposal. As always, if I can provide further information please don't hesitate to contact me or Christina Tsafoulias in my office at 5-5111.

Michael E. Canuano